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December 16, 1998

COURIER

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RECEIVED

DEC 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation:

**In the Matter of Minnesota Petition for Declaratory Ruling Regarding the
Relevance of Section 253 of the Telecommunications Act to an Agreement
Governing Access to State Freeway Rights-of-Way (CC Docket No. 98-1)**

Dear Ms. Salas:

On Wednesday, December 16, 1998, Mark Johnson, Staff Attorney and Associate Director of Policy and Partnership at the Intelligent Transportation Society of America ("ITS America"), and Robert B. Kelly and Benigno E. Bartolome of Squire, Sanders & Dempsey L.L.P. met with Claudia Pabo and David Kirschner of the Federal Communications Commission, Common Carrier Bureau, Policy & Program Planning Division.

The issues discussed were ITS America's interest in the proceeding, what intelligent transportation systems are, how the deployment of intelligent transportation systems might be affected by a decision adverse to the State of Minnesota, safety concerns, the attached ITS America policy statement on shared resources agreement, which was distributed at the meeting, and the arguments raised by ITS America in its reply comment in the proceeding. Additionally, FCC staff invited ITS America to submit any available data regarding safety issues.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter, both of which include the written material presented at the meeting, are being filed with

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Dear Ms. Salas: Magalie Roman Salas
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your office for inclusion in the public record. If you have any questions concerning this submission, please contact the undersigned.

Sincerely

A handwritten signature in cursive script, reading "B. Bartolome", followed by a horizontal line extending to the right.

Benigno E. Bartolome

Copy: Claudia Pabo
David C. Kirschner
Mark Johnson



November 10, 1998

The Honorable Rodney E. Slater
Secretary
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

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DEC 16 1998

FEDERAL DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Dear Secretary Slater:

In ITS America's capacity as a utilized Federal Advisory Committee to the U.S. Department of Transportation, I am transmitting advice on behalf of the Board of Directors of ITS America regarding the importance of shared resource telecommunications agreements for the national deployment of Intelligent Transportation Systems (ITS). This Policy Statement also was prepared to provide input to other federal agencies, such as the Federal Communications Commission, state and local governments, and the private sector as part of ITS America's overall mission to promote ITS.

Shared resource telecommunications agreements involve the granting of access to highway and transit rights-of-way (ROW) to private sector carriers by public agencies for the installation of fiber optic and other telecommunications capacity for Intelligent Transportation Services (ITS) and other applications. Since the Federal Highway Administration relaxed its prohibition on granting access to Interstate Highway System ROWs in 1996, several states, including Minnesota, New York, Florida, Illinois, Missouri, Maryland, New Jersey and Oregon, have either initiated or signed contracts for shared resource telecommunications projects. Many other states are currently considering the use of this project form for ITS deployment.

Most importantly, shared resource telecommunications agreements will foster the deployment of ITS across the United States. By leveraging a government asset, the right-of-way, with private sector capital and expertise, public agencies are able to acquire the telecommunications backbone necessary to provide ITS services and other government functions to the public. In addition, these agreements support the goal of public/private partnering articulated in both the Intermodal Surface Transportation Efficiency Act (ISTEA) and the recently enacted Transportation Equity Act for the 21st Century (TEA 21).

In January 1998, the Minnesota Department of Transportation (MnDOT) filed a Petition for a Declaratory Ruling with the Federal Communications Commission (FCC) seeking an opinion that its shared resource agreement to develop a state-wide fiber optic network does not

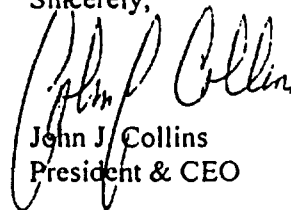
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violate the Telecommunications Act of 1996. This petition is still pending. ITS America, as well as the U.S. Department of Transportation and others interested in ITS, filed comments with the FCC in response to MnDOT's petition.

ITS America will continue to provide input to the FCC and others on the importance of shared resource telecommunications agreements for ITS deployment. The ITS America membership developed the attached Policy Statement on Shared Resource Agreements to support outreach activities on this topic. At its August meeting, the ITS America Board of Directors unanimously approved the Policy Statement as formal program advice to the U.S. Department of Transportation.

I want to thank the continuing assistance of the U.S. Department of Transportation's Office of the General Counsel, the Federal Highway Administration's Office of Chief Counsel, and the ITS Joint Project Office in the development of this Policy Statement.

Sincerely,



John J. Collins
President & CEO

attachment

cc: Deputy Secretary Mortimer L. Downey (w/ attachment)
General Counsel Nancy E. McFadden (w/ attachment)
Deputy Chief Counsel, Federal Highway Administration, Edward V. Kussy (w/ attachment)
Director, ITS Joint Program Office, Dr. Christine Johnson (w/ attachment)



ITS America Policy Statement:
Shared Resource Agreements
November 1998

The Minnesota Department of Transportation has petitioned the Federal Communications Commission (FCC) for a declaratory ruling that its shared resource agreement to develop a state-wide fiber optic network for ITS and other purposes along its freeway rights-of-way does not violate the Telecommunications Act of 1996. As part of its deliberative process, the FCC requested comments on Minnesota DOT's petition. A significant number of comments were submitted, including from ITS America.

ITS America's mission is to promote the development and deployment of ITS. In support of this mission, ITS America will provide continuing input to the FCC and others on shared resource agreements generally and the Minnesota DOT petition specifically. Accordingly, the following Policy Statement on Shared Resource Agreements was developed with member input to assist in this effort. The ITS America Board of Directors has unanimously adopted the Policy Statement and directed that it be transmitted to the U.S. Department of Transportation as formal program advice in accordance with ITS America's role as a utilized Federal Advisory Committee on ITS matters.

Questions and comments may be submitted to Mark Johnson at ITS America: (202) 484-4582 or mjohnson@itsa.org.

1. SHARED RESOURCE AGREEMENTS WILL FACILITATE THE DEPLOYMENT OF ITS SERVICES

ITS America advocates the access of freeway and transit rights-of-way by the private sector telecommunications industry for the installation of fiber optic and other telecommunications capacity that will benefit both the public and private sector. Shared resource agreements between State and local authorities and private sector parties that accomplish this goal will facilitate the deployment of ITS services by providing needed backbone telecommunications capacity for both private and public sector interests and by enabling the governing authorities to realize efficiencies in the management of their infrastructure. Shared resource agreements are consistent with the national deployment of ITS user services and reflect the private/public partnering necessary for a robust ITS deployment consistent with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the Transportation Equity Act for the 21st Century (TEA 21), and the National ITS Architecture. Such agreements will spur both public and private investment in, and expedite the deployment of, intelligent transportation systems.

2. STATE AND LOCAL AUTHORITIES SHOULD HAVE FLEXIBILITY TO ENTER INTO SHARED RESOURCE AGREEMENTS

ITS America believes that the optimum utilization of shared resource agreements requires that the governing authorities possess the flexibility to enter into a wide range of agreements, including agreements that provide for in-kind compensation. ITS America further believes that State and local authorities are uniquely situated to determine the public safety and welfare impact from the installation of telecommunications capacity along their rights-of-way. State and local transportation agencies should thus receive substantial deference in the management of their rights-of-way. ITS America, accordingly, believes that the governing authorities should be provided the maximum flexibility possible consistent with existing law to enter into shared resource agreements.

3. THE TELECOMMUNICATIONS ACT OF 1996 SUPPORTS THE USE OF SHARED RESOURCE AGREEMENTS

Section 253 of the Telecommunications Act of 1996 empowers the FCC to preempt a State or local statute or regulation or other legal requirement that may have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Section 253 of the Telecommunications Act of 1996 expressly provides the States a safe harbor for shared resource agreements concerning their rights-of-way, provided that State laws and regulations concerning those agreements are competitively neutral and nondiscriminatory and provided that the compensation received is publicly disclosed. Section 253 similarly protects the States' rights to adopt such laws as are necessary to protect the public welfare, provided such laws are also competitively neutral. ITS America believes that the goals of TEA 21 and the Telecommunications Act concerning shared resource agreements are in harmony and can best be accomplished by State and local authorities entering into such agreements upon the basis of an open and competitive procurement process subject to applicable governing procurement laws and regulations.

ITS America urges that the FCC support States' and local agencies' flexibility to enter into shared resource agreements concerning their rights-of-way and to therefore refrain from reviewing the specific terms and conditions of shared resource agreements which have resulted from an open and competitive procurement process. Where the procurement process is open and competitive, ITS America believes that the intent of the Telecommunications Act has been satisfied.